

SENATE BILL 2125
By Black

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, relative to tobacco and tobacco
products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-1603, is amended by adding the following language as new, appropriately designated subdivisions:

() "Commissioner" means the commissioner of health;

() "Department" means the department of health;

SECTION 2. Tennessee Code Annotated, Section 39-17-1606, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)

(1) If any complaint is made to the department concerning any alleged violation of this chapter, the department shall investigate such complaint and shall take such action as it deems necessary to protect the children in the facilities identified in § 39-17-1604, including causing a written complaint to be delivered to the alleged violator or violators. The complaint shall specify the provision or provisions of this chapter alleged to be violated and the facts alleged to constitute a violation of this chapter, and may order that corrective action be taken within a reasonable time to be prescribed in such order, and shall inform the violators of the opportunity for a hearing.

(2) The department shall develop a method of informing the public concerning the filing of such a complaint.

(b) Any such order shall become final and not subject to review unless a written request for a hearing is made by the person or persons named in the order no later than thirty (30) days after the date such order is delivered; provided, that the commissioner may review such final order, on the same grounds upon which a court of the state may review default judgments.

(c) Except as otherwise expressly provided, any notice, complaint, order, or other instrument issued by or under authority of this chapter may be served on any person by the commissioner or any person designated by the commissioner, by certified mail, or in accordance with Tennessee statutes authorizing service of process in civil actions.

(d) Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner issued pursuant to this chapter, or any rule, regulation, or standard adopted pursuant to this chapter shall be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) per day for each day of violation. Each day such violation continues is a separate violation. In addition, such person shall also be liable for any damages to the state resulting from the violation, without regard to whether any civil penalty is assessed.

(e) Any civil penalty or damages shall be assessed in the following manner:

(1) The commissioner may issue an assessment against any person responsible for the violation or damages;

(2) Any person against whom an assessment has been issued may secure a review of such assessment by filing with the commissioner a written petition setting forth the grounds and reasons for the objections and asking for a hearing in the matter involved. If a petition for review of the assessment is not filed within thirty (30) days after the date the assessment is served, the violator

shall be deemed to have consented to the assessment and it shall become final;
and

(3) Whenever any assessment has become final because of a person's failure to appeal the commissioner's assessment, the commissioner may apply to the appropriate court for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such assessment as a confession of judgment in the amount of the assessment.

(f) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this chapter.

(g) Any hearing or rehearing brought before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h) All civil penalties, other than for recovery of expenses incurred in investigating and enforcing violations of this chapter, shall be retained by the department and designated for youth tobacco prevention programs.

SECTION 3. This act shall take effect July 1, 2005, the public welfare requiring it.